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*Sh.*  
*E. fulton*  
*4/22/03*  
PatentIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of  
SHANNON MORRIS  
Serial No. 10/004,511  
Filed: October 22, 2001  
For: METHOD AND APPARATUS  
FOR JEWELRY ORGANIZATION

) ) Examiner: Luan K. Bui  
 ) ) Group Art Unit: 3725  
 ) )  
 ) )  
 ) )  
 ) )

REQUEST TO RESET OR RESTART REPLY PERIOD AND  
TO CORRECT OFFICE ACTION TO BE NON-FINAL

Commissioner of Patents  
Box AF  
Washington, D.C. 20231

Sir:

Applicant respectfully requests that the reply period on the Office Action mailed October 30, 2002, be reset or restarted and that it be corrected to designate the Office Action as non-final.

The grounds for requesting that the reply period on the Office Action be reset or restarted is that the Office Action contains a defect. See MPEP § 710.06. Specifically, in the Office Action Summary, page 1 of the Office Action, it is indicated that "This Action is non-final." However, page 5 of the Office Action contains the statement that "THIS ACTION IS MADE FINAL." A copy of the Office Action is attached hereto.

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Clearly the directly contradictory statements in the Office Action that it is both "non-final" and "FINAL" constitute a defect within the purview of MPEP § 710.06. MPEP § 710.06, entitled "Situations When Reply Period Is Reset or Restarted," states in pertinent part:

Where the citation of a reference is incorrect or an Office action contains some other defect and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant. If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply. The new period for reply must be at least 1 month and would run from the date the error is corrected. See MPEP § 707.05(g) for the manner of correcting the record where there has been an erroneous citation.

Where for any reason it becomes necessary to remail any action (MPEP § 707.13), the action should be correspondingly redated, as it is the remailing date that establishes the beginning of the period for reply. *Ex parte Gourtoff*, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924).

(Emphasis added.)

Applicant is bringing this error to the attention of the Office within the three (3) month period for reply set in the Office action, but more than one month after

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the date of the Office action. Applicant requests that the examiner set a new period for reply to substantially equal the time remaining in the reply period, and to quote MPEP § 710.06, "the new period for reply must be at least 1 month and would run from the date the error is corrected." (Emphasis added.) Therefore, Applicant requests that the reply period on the Office Action be reset for at least one month from the date that the examiner corrects this error.

In setting a new period for reply, it is incumbent on the patent examiner to eliminate the contradictory statements in the Office Action and correct it as to whether the action is properly non-final or final. Applicant respectfully submits that the action can only be properly designated non-final for the following reasons.

MPEP § 706.07(a), entitled "Final Rejection, When Proper on Second Action," states in pertinent part:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609 paragraph (B)(2). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing

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reexamination proceedings will not be made final if it includes a rejection on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

(Emphasis added.)

In the Office Action mailed October 30, 2003, the examiner relied on newly cited art, U.S. Patent No. 2,036,572 to Frost, to reject claims under 35 U.S.C. §§ 102-103 that were not amended by Applicant. The unamended claims that the examiner rejected over the newly cited Frost patent include claims 1, 2, 4-7 and 12-15. To be sure, Applicant made a very minor amendment to independent claim 8, which had the effect of amending dependent claims 9-11, and the Examiner also rejected these claims over the Frost patent. However, to quote MPEP § 706.07(a), "a second or any subsequent action on the merits in any application . . . will not be made final if it includes a rejection, on newly cited art . . . of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art." (Emphasis added.)

Although Applicant disputes whether the minor amendment made to independent claim 8 and hence dependent claims 9-11, required newly cited art, the above quoted statement from MPEP § 706.07 mandates that the Office Action mailed October 30, 2002, could not properly have been made final under the circumstances where Applicant made no amendment to claims 1, 2, 4-7 or 12-15. Accordingly,

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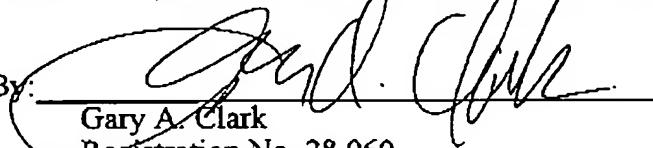
Applicant requests that the examiner correct this procedural error and designate the Office Action non-final when he resets the reply period and remails the Office Action to comply with MPEP § 710.06.

Date: January 21, 2003

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By:

  
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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,511	10/22/2001	Shannan Morris	SSV-83441	6509

7590  
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NOV 09 2002

SHEPPARD, MULLIN, RICHTER  
& HAMPTON LLP

EXAMINER
BUI, LUAN KIM

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 10/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/004,511	MORRIS, SHANNON
	Examiner Luan K. Bui	Art Unit 3728

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 09 September 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6) Other: \_\_\_\_\_

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*Specification*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

2. The specification is objected to under 37 CFR 1.71, as the specification, as originally filed, does not provide support for the new matter on pages 3 and 4 of the amendment and Figure 5 filed on 9/9/2002. The added material which is not supported by the original disclosure is as follows: "glass, cardboard" on page 3 and "or more" on page 4 of the amendment because the specification as originally filed does not provide support for such phrases. Furthermore, the specification as originally filed does not provide support for the starting point of a continuous channel 20' in a spiral configuration centered about a knob 28' and the ending point near the edge of the organizer as shown in Figure 5. The starting point of the continuous channel may be located next to the knob and the ending point does not have to be near the edge of the organizer (see Figures 1-4). Applicant is required to cancel the new matter in reply in this office action.

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3. Claims 1-20 are rejected under 35 USC 112, first paragraph, for the reasons set forth in the objection to the specification.

*Drawings*

4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9/9/2002 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the starting point of a continuous channel 20' in a spiral configuration centered about a knob 28' and the ending point near the edge of the organizer as shown in Figure 5. The starting point of the continuous channel may be located next to the knob and the ending point does not have to be near the edge of the organizer (see Figures 1-4).

*Terminal Disclaimer*

5. The terminal disclaimer filed on 9/9/2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the U.S. Patent No. 6,334,530 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The preamble in claims 1, 8 and 12 have been accorded no weight in accordance with the court's instruction in *Kropa v. Robic*, 187F.2d 150, 152, 88 USPQ 478 (CCPA 1951).

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*Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 7-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Grusin (5,040,681). Grusin discloses a cover/organizer (18) comprising a body (32) having an upper surface and a lower surface, a knob (50) protruding upwardly from the upper surface, at least two compartments (14, one on each side of the knob) formed in the upper surface of the body with each compartment defined as an elongated channel on each side of the knob, and a recess in the lower surface of the body. The knob of Grusin is inherently capable of receiving at least one finger ring over the knob (Figures 1-5).

*Claim Rejections - 35 USC § 103*

7. Claims 1-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Frost (2,036,572). Frost discloses an organizer (16) comprising a body (1) having an upper surface and a lower surface, a knob (4) protruding upwardly from the upper surface, at least two compartments (10, 11, 14, 15) formed in the upper surface of the body with each compartment defined as an elongated channel around of the knob with separating walls (5, 8, 12) between the compartments, and a recess in the lower surface of the body. The knob of Frost is inherently capable of receiving at least one finger ring over the knob and the recess and the knob of Frost are capable of providing a means for a stackable configuration (Figures 1-2). To the extent that Frost fails to disclose a stackable configuration, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Frost to stack a plurality of organizer together in a package for selling purposes

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since Frost is clearly discloses a means such as the knob (4) with the recess of stackable configuration.

*Response to Arguments*

Applicant's arguments with respect to all pending claims have been considered but are deemed to be moot in view of the new grounds of rejection.

The claims of the instant patent application are much broader than the claims in the issued patent.

The recesses on each side of the knob are considered separate compartments because they are separated by the knob.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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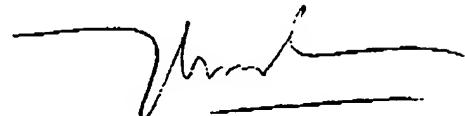
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148. Facsimile correspondence for this application should be sent to (703) 305-3580 or (703) 872-9302 for Formal papers and (703) 872-9303 for After Final communications.

lkb  
October 28, 2002



Luan K. Bui  
Primary Examiner

<b>Notice of References Cited</b>	Application/Control No.	Applicant(s)/Patent Under Reexamination	
	10/004,511	MORRIS, SHANNON	
	Examiner Luan K. Bui	Art Unit 3728	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-2036572	04-1936	Frost	220/608
B	US-			
C	US-			
D	US-			
E	US-			
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

**FOREIGN PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Data, Publisher, Edition or Volume, Pertinent Pages
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

PTO/SB/97 (08-00)

Approved for use through 10/31/2002. OMB 0551-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

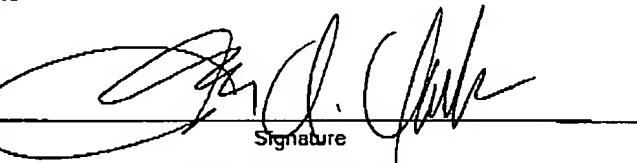
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## Transmittal Form

Request to Reset or Restart Reply Period and to Correct Office

Action to be Non-Final

Copy of Office Action

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PTO/SB/21 (08-00)

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# TRANSMITTAL FORM

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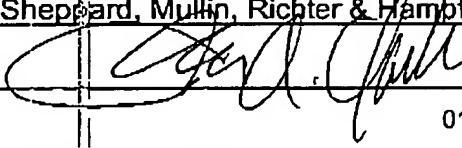
16

Application Number	10/004,511
Filing Date	10/22/2001
First Named Inventor	Shannon Morris
Group Art Unit	3725
Examiner Name	Luan K. Bui
Total Number of Pages	16
Attorney Docket Number	OSSV-083441

ENCLOSURES *(check all that apply)*

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers <i>(for an Application)</i>	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group <i>(Appeal Notice, Brief, Reply Brief)</i>
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) <i>(please identify below):</i>
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Request to Reset or Restart
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Reply Period and to Correct
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> Office Action to be Non-Final
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
	Remarks	

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Gary A. Clark, Esquire Sheppard, Mullin, Richter & Hampton LLP
Signature	
Date	01/21/2003

## CERTIFICATE OF MAILING

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### FACSIMILE COVER SHEET

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Date: January 21, 2003

File Number: OSSV-083441

Total number of pages:  
(including 1-page cover sheet)

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Sheppard Mullin at 213-620-1780, ext. 2155

<u>TO:</u>	<u>Facsimile No.</u>	<u>Telephone No.</u>
Commissioner for Patents United States Patent and Trademark Office	(703) 872-9303	703-308-1148

From: Gary A. Clark

Re: Method and Apparatus for Jewelry Organization

**MESSAGE:**

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JAN 21 2003  
GROUP 3700*

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